

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
New Era Oil Service, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Corporation
Franchise Tax under Article(s) 9A of the Tax :
Law for the Period 3/31/80 - 3/31/81.
:

State of New York :

ss.:

County of Albany :

David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 20th day of October, 1986, he/she served the within notice of Decision by certified mail upon New Era Oil Service, Inc. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

New Era Oil Service, Inc.
402 Parsons Drive
Syracuse, NY 13219

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
20th day of October, 1986.

Janet M. Snay

David Parchuck
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

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State of New York :
ss.:
County of Albany :

David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 20th day of October, 1986, he served the within notice of Decision by certified mail upon Shae C. Riley, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Shae C. Riley
Grimaldi, Fagliarone & Tornatore
650 James St.
Syracuse, NY 13203

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
20th day of October, 1986.

David Parchuck
Authorized to administer oaths
pursuant to Tax Law section 174

Janet M. Snay

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

October 20, 1986

New Era Oil Service, Inc.
402 Parsons Drive
Syracuse, NY 13219

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Audit Evaluation Bureau
Assessment Review Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:
Shae C. Riley
Grimaldi, Fagliarone & Tornatore
650 James St.
Syracuse, NY 13203

STATE TAX COMMISSION

DECISION

1. On July 30, 1982, the Audit Division issued to petitioner, New Era Oil Service, Inc., three statements of audit adjustment asserting corporation franchise tax deficiencies under Article 9-A of the Tax Law for the fiscal years ended March 31, 1979, March 31, 1980 and March 31, 1981. The asserted deficiencies

were premised upon the Audit Division's disallowance of an investment tax credit claimed by petitioner with respect to each of the aforementioned periods.

2. On October 6, 1982, the Audit Division issued to petitioner two notices of deficiency asserting additional tax due under Article 9-A of the Tax Law in amounts as follows:

<u>Year Ended</u>	<u>Tax Deficiency</u>	<u>Interest</u>	<u>Balance Due</u>
3/31/80	\$ 443.00	\$132.56	\$ 575.56
3/31/81	\$2,597.00	\$555.19	\$3,152.19

3. The Audit Division did not issue a Notice of Deficiency with respect to petitioner's fiscal year ended March 31, 1979. As a result, the Audit Division conceded that the franchise tax asserted due in the Statement of Audit Adjustment for the fiscal year ended March 31, 1979 be cancelled. The investment tax credit claimed for petitioner's fiscal year ended March 31, 1979 remains relevant to this proceeding, however, because petitioner carried forward a portion of the credit claimed on its return for fiscal year ended March 31, 1979 to fiscal years ended March 31, 1980 and March 31, 1981.

4. Specifically, petitioner claimed an investment tax credit with respect to the following property:

<u>FYE</u>	<u>Description</u>	<u>Amount of Claimed Credit</u>
3/31/79	1973 Fruehauf trailer	\$ 179.00
3/31/79	1973 Fruehauf trailer	\$ 180.00
3/31/79	1974 Ford tractor	\$ 277.00
3/31/79	1977 Brockway	\$1,120.00
3/31/79	1974 Chevy	\$ 360.00
3/31/79	1975 Chevy	\$ 489.00
3/31/79	1977 GMC	\$ 744.00
3/31/79	1977 Chevy	\$ 845.00
3/31/79	1977 Chevy	\$ 845.00
3/31/79	1973 Chevy	\$ 235.00
3/31/80	1977 GMC Tank Truck	\$1,240.00
3/31/80	Engine	\$ 470.00

3/31/80	Equipment repairs	\$ 191.00
3/31/80	Centrifuge	\$ 22.00
3/31/81	Major overhauls of trucks	\$ 223.00

5. The Audit Division allowed petitioner a credit of \$22.00 in connection with its purchase of the centrifuge, but denied in full the balance of the credit claimed by petitioner. The Audit Division's denial of the credit was premised upon its contention that the property purchased by petitioner was not "directly and principally used in the production of goods by an industrial type of activity such as manufacturing, processing or assembling."

6. Petitioner is and was at all times relevant herein a New York corporation engaged in the business of purchasing "waste" or "junk" oil, removing such oil from tanks at various locations and transporting the oil to its facility where the oil was transferred into other vehicles. The oil was then transported and sold to purchasers who further refined it and, in turn, resold it.

7. Petitioner took the position that the trucks and trailers upon which its investment tax credit claims were based were principally used in processing oil. At hearing, petitioner's representative contended that only two of the vehicles in question were used in transporting oil, while the remaining vehicles were used solely for processing the oil by transferring the oil through filters from the on-road vehicles to the off-road trucks and trailers at petitioner's facility. Petitioner's representatives stated that the filters were located on the vehicle from which the oil was transferred. Petitioner's representatives did not know what the filtration devices consisted of or the manner in which such devices were used. Petitioner's representatives contended that certain oil was filtered more than once, but introduced no evidence as to the frequency with which this procedure was performed. Regarding the vehicles which were claimed to have been used in transporting oil to petitioner's facility, no

evidence was introduced at hearing as to said vehicles' proportion of usage in transporting oil and proportion of usage in filtering oil.

8. At hearing, petitioner's representatives testified on petitioner's behalf. Petitioner's representatives had no personal knowledge of the operations described in Findings of Fact "6" and "7". No direct evidence of any kind was introduced at hearing on petitioner's behalf.

CONCLUSIONS OF LAW

A. That during the years at issue, section 210.12(b) of the Tax Law provided for a credit against corporation franchise tax with respect to tangible personal property which was depreciable pursuant to section 167 of the Internal Revenue Code; had a useful life of four years or more; was acquired by purchase as defined in section 179(d) of the Internal Revenue Code; had a situs in New York State; and was principally used by the taxpayer in the production of goods by manufacturing, processing, or refining. The term "principally used" is defined at 20 NYCRR 5-2.4(c) as "more than 50 percent".

B. That section 1089(e) of the Tax Law provides that "[i]n any case before the Tax Commission commenced under [Article 9-A] the burden of proof shall be upon the petitioner," with exceptions not relevant herein. Accordingly, in the matter at issue herein, petitioner bore the burden of proof to show wherein the deficiencies asserted against it were improper (Matter of Reader's Digest Association, Inc. and Subsidiaries v. State Tax Commission, 103 AD2d 926, 927).

C. That in view of Findings of Fact "6", "7", and "8", petitioner has failed to meet the burden of proof imposed upon it pursuant to section 1089(e) of the Tax law. Specifically, petitioner has failed to establish that its trucks were used in the production of goods by manufacturing, processing or refining.


Moreover, even assuming, arguendo, that petitioner's trucks were used, to some degree, in manufacturing, processing or refining, petitioner has failed to establish that such vehicles were "principally used" in such a manner within the meaning of 20 NYCRR 5-2.4(c).

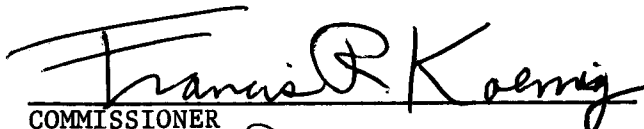
D. That except to the extent indicated in Finding of Fact "3" herein, the petition of New Era Oil Service, Inc. is denied and the notices of deficiency issued to petitioner on October 6, 1982 are sustained.

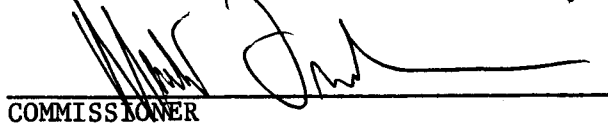
DATED: Albany, New York

STATE TAX COMMISSION

OCT 20 1986


PRESIDENT


COMMISSIONER


COMMISSIONER